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IN THE
Supreme Court of the United States

OCTOBER TERM 1992

THE 1975 SALARIED RETIREMENT PLAN
FOR ELIGIBLE EMPLOYEES
OF CRUCIBLE, INC., ET AL.,
Petitioners,

v.

DAVID A. NOBERS, ET AL.,
Respondents.

On Petition for Writ of Certiorari to the United States Court of Appeals for the Third Circuit

REPLY BRIEF IN SUPPORT

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REPLY BRIEF IN SUPPORT

A. An Injunction Is Authorized in Aid of the District Court's Jurisdiction in this Matter

1. THE PANEL BELOW CORRECTLY FOUND THAT RESPONDENTS' CLAIMS IN *NOBERS II* ARE PREEMPTED AND SUBJECT TO EXCLUSIVE FEDERAL JURISDICTION

Respondents' substantive arguments regarding preemption are unavailing. (Respondents' Brief in Opposition, at 3 [hereinafter "Res.Br."].) The panel below correctly found that Respondents' claims are preempted by ERISA and are subject to exclusive federal jurisdiction under ERISA. (App. at 10a-11a.) The question presented for *certiorari* is whether the federal courts, upon finding preemption and exclusive federal jurisdiction, are empowered under the Anti-Injunction Act to enjoin state court proceedings.

Exclusive federal jurisdiction under ERISA section 502(e)(1), which provides compelling grounds to make injunctive relief available, follows from the related but separate

finding of preemption. (*See* Petition for Certiorari, at 7-11.) The panel's finding of preemption in this case is both dispositive[1] and indisputable; the panel's holding is perfectly in line with this Court's extensive jurisprudence on the subject of ERISA preemption. *See District of Columbia v. Greater Washington Bd. of Trade*, 61 U.S.L.W. 4039, 1992 U.S. LEXIS 7847 (Dec. 14, 1992); *Ingersoll-Rand Co. v. McClendon*, 111 S. Ct. 478 (1990); *FMC Corp v. Holliday*, 111 S. Ct. 403 (1990); *Massachusetts v. Morash*, 490 U.S. 107 (1989); *Mackey v. Lanier Collection Agency & Serv.*, 486 U.S. 825 (1988); *Fort Halifax Packing Co. v. Coyne*, 482 U.S. 1 (1987); *Metropolitan Life Ins. Co. v. Taylor*, 481 U.S. 58 (1987); *Pilot Life Ins. Co. v. Dedeaux*, 481 U.S. 41 (1987); *Metropolitan Life Ins. Co. v. Massachusetts*, 471 U.S. 724 (1985); *Shaw v. Delta Air Lines*, 463 U.S. 85 (1983); *Franchise Tax Bd. of Cal. v. Construction Laborers Vacation Tr. for S. Cal.*, 463 U.S. 1 (1982); *Alessi v. Raybestos-Manhattan*, 451 U.S. 504 (1981).

Respondents attempt to mislead this Court by suggesting that *Ingersoll-Rand* is not determinative of the preemption issue here because *Ingersoll-Rand* involved a tort claim, while *Nobers II* is couched as a contract claim. (*See* Res.Br. at 3.) Since the state court lawsuit in *Ingersoll-Rand* involved "various tort and contract principles," *Ingersoll-Rand* applies equally to both. 111 S. Ct. at 481. Furthermore, Respondents invoke both contract and tort theories in *Nobers II*. Moreover, ERISA section 510 subsumes both contract and tort

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[1] Neither the district court opinion nor the state court opinion cited by Respondents has any bearing here. (*See* Res.Br. at 3.) The district court opinion is obviously from an inferior court, and in any event the excerpt Respondents quote does not represent a judicial holding, but merely describes how Respondents couched their state court claims in *Nobers II*. The state court opinion cited by Respondents is equally unavailing, since Petitioners were not parties or privies to that lawsuit, and since the state court is simply without power to confer jurisdiction upon itself. *See NGS American, Inc. v. Barnes*, 1992 U.S. Dist. LEXIS 17080, at *22 (Oct. 8), *appeal filed*, No. 92-CV-8612 (5th Cir. Nov. 4, 1992); *see also Metropolitan Life Ins. Co. v. Taylor*, 481 U.S. 58 (1987).

claims.[2] *See Tolle v. Carroll Touch, Inc.*, 977 F.2d 1129, 1137 (7th Cir. Oct. 20. 1992).

The real question here is whether, given an obvious and correct finding of preemption and exclusive federal jurisdiction, the federal courts are empowered to enjoin state court proceedings that interfere with the exercise of exclusive federal jurisdiction. The resolution of this question is somewhat like the golden spike that finally joined the transcontinental railroad. This Court must determine whether injunctive relief is available to fully implement the preemption and jurisdictional scheme set forth in ERISA.

To categorically deny the federal courts the remedy of injunctive relief to protect ERISA's exclusive federal court jurisdiction is to tacitly encourage the construction of parallel frameworks of state law governing employee benefits – a result that Congress labored to prevent. *See Ingersoll-Rand*, 111 S. Ct. at 484 (Congressional goal was to "ensure that plans and plan sponsors would be subject to a uniform body of benefit law"). This case presents the issue squarely; there are no extraneous issues which might cloud the analysis of whether injunctive relief should be available to enforce ERISA's exclusive jurisdiction, and to foster the continued development of a uniform body of federal law. Therefore, this Court should grant *certiorari*.

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[2] This Court should not be swayed by Respondent's misleading argument that *Nobers II* is an action on an employment contract. (Res.Br. at 3.) Respondents were terminated because their employer closed the facility where Respondents were employed. *Nobers II* is obviously not a case involving anticipated continued employment, and indeed Respondents seek nothing in the way of future employment rights. The sole consequence of the allegedly wrongful failure to return Respondents to the bargaining unit is that Respondents are participants receiving benefits from the Salaried Plans, rather than the Collective Bargaining Unit Plans. Respondents seek the benefits provided by the latter Plans. As noted in the Petition for Certiorari, at 28-30, this is as purely a benefits rights question as can be postulated.

2. ONLY THE FEDERAL DISTRICT COURT HAS JURISDICTION TO CONCLUSIVELY DETERMINE THE RIGHTS AND LIABILITIES AT ISSUE IN *NOBERS II*

Respondents argue that a state court judgment in *Nobers II* "will not conclude the rights and liabilities of Petitioner benefit plans which are not parties to that action[,]" and that it "will not determine Petitioners' obligations." (Res.Br. at 4.) Respondents fail to apprehend that a state court judgment addressing Respondents' self-styled "contract" and "tort" claims in *Nobers II* can potentially (1) give rise to a prohibited transaction which will adversely affect the Plans; (2) cause the Plans to become liable to Respondents for benefits; and/or (3) require interpretations of the Petitioner Plans that are properly the province of the Plan administrators.

First, a state court judgment in favor of Respondents in *Nobers II*, though entered without jurisdiction, could cause a prohibited transaction in violation of ERISA and the Internal Revenue Code. If the state court defendants are found liable, any adjustment of the liability assessed against them to account for benefits received under the Salaried Plans could be characterized as a use of Plan assets benefiting a party in interest. This is a prohibited transaction. *See* ERISA sections 3(14), 406(a)(1)(D) and 502(i) & (l); Internal Revenue Code section 4975(c)(1)(D). The panel below erroneously discounted this possibility (*see* App. at 20a), failing to appreciate that federal agencies may not be so quick to disregard statutory violations. Furthermore, the state court defendants (Crucible and Colt) cannot implead the federal agencies in the state court action to bind the federal agencies to a judicial resolution of the dispute. *See Federal Nat'l Mortg. Ass'n v. Le Crone*, 868 F.2d 190, 193 (6th Cir.), *cert. denied*, 493 U.S. 938 (1989) (jurisdiction to review federal agency actions is implicitly limited to the federal courts).

Second, Respondents assume too much when they suggest that the state court judgment will not directly determine the liabilities of the Petitioner Plans. The prayer for damages in Respondents' state court complaint does not foreclose the possibility that the state court may ultimately order specific

performance of the alleged contract – ordering the employer to perform by returning Respondents to the bargaining unit so that Respondents may become eligible to receive Collective Bargaining Unit Plan benefits. It does not matter whether specific performance is an unlikely outcome. The point is that injunctive relief should not be categorically withheld on an assumption that the state court here – or any state court at any time – will only award damages rather than specific performance. This is too much to presume.

There is a yet another route by which the Plans might become liable as a result of a state court judgment in *Nobers II*. Respondents allege that they had a right to be reclassified as bargaining unit employees, or alternatively to be treated "as if" they had been reclassified as bargaining unit employees.[3] If the state court agrees with them, is the administrator of the Collective Bargaining Unit Plans compelled to treat Respondents as participants in the Collective Bargaining Unit Plans? *See Eckersley v. WGAL TV, Inc.*, 831 F.2d 1204, 1210 (3d Cir. 1987). Could Respondents, in effect, recover *both* damages *and* benefits? If not, why not? Such a scenario clearly subjects the Plans and the Plans' sponsor to a parallel and conflicting framework of state law. *See Ingersoll-Rand*, 111 S. Ct. at 484.

Third, if the state court finds that Respondents had a right to be returned to the bargaining unit, it will have to interpret the terms of the Petitioner Plans to determine what rights Respondents would have had. Because any "damages" award must be determined by reference to the terms of the Plans, the state court cannot provide a remedy to Respondents without usurping the authority of Petitioner fiduciaries to interpret the terms of Petitioner Plans.[4]

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[3] Respondents' state court complaint in *Nobers II* recites that they had a right "to return to the bargaining unit from which promoted at the time of layoff, or to be treated as a bargaining unit person in layoff status."

[4] State courts have concurrent jurisdiction only over claims for benefits against plans. ERISA section 502(a)(1)(B) and (e)(1). Such claims are governed, first by the terms of the plan itself, and second by the plan administrator's initial determination to the extent authorized by the plan. *See Firestone Tire & Rubber Co. v. Bruch*, 489 U.S. 101 (1989). Any judicial

This Court should grant *certiorari* to forestall the state courts from unwittingly creating a morass of problems for qualified plans through the well-meaning but unauthorized exercise of non-existent jurisdiction, and to delineate the ability of the federal courts to protect and implement their own exclusive jurisdiction.

3. As Non-Parties To The State Court Action, Petitioners Are Entitled To Injunctive Relief

Respondents simultaneously argue that Petitioners (1) are foreclosed from seeking an injunction because of previous decisions rendered in the course of *Nobers II*, yet (2) cannot obtain injunctive relief because they are not parties to the state court action in *Nobers II*. (Res.Br. at 3.) This is a double edged sword indeed.

No state court decision can foreclose Petitioners from obtaining an injunction, since the state court lacks jurisdiction. "[S]tate courts lack jurisdiction to decide the dispositive issue, whether ERISA preempts this state [law] []." *NGS American*, 1992 U.S. Dist. LEXIS 17080, at *22.

Furthermore, the fact that Petitioners are not parties or privies to the state court litigation is all the more reason why Petitioners ought to be able to obtain injunctive relief. This calls into play the so-called "stranger" exclusion from the Anti-Injunction Act articulated in *County of Imperial v. Munoz*, 449 U.S. 54 (1980), and in *Hale v. Bimco Trading, Inc.*, 306 U.S. 375 (1939). As the Third Circuit summarized: "The term 'stranger' describes a litigant who, neither a party nor in privity with a party to the state court action, is not bound by those previous proceedings." *United States Steel Corp. Plan for Employee Ins. Benefits v. Musisko*, 885 F.2d 1170 (3d Cir. 1989), *cert. denied*, 110 S. Ct. 1121 (1990) (citations omitted). Such a person may obtain a federal injunction against enforcement of a state court judgment; the Anti-Injunction Act

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review, whether by a state or a federal court, is limited and circumscribed by the terms of the plan and the administrator's exercise of discretion. To provide a remedy in *Nobers II*, however, the state court will have to independently interpret terms such as "service" and "compensation." The state court's interpretation might contradict interpretations of the Plans' fiduciaries and create troublesome precedent for future interpretations.

is inapplicable to bar the injunction. *Munoz*, 449 U.S. 54. If a "stranger" can obtain an injunction against enforcement of a state court judgment, the same "stranger" should be able to enjoin state court litigation before a judgment issues. *See Hill v. Martin*, 296 U.S. 393, 403 (1935) (the term "proceedings" in the Anti-Injunction Act is comprehensive, encompassing "all steps taken or which may be taken in the state court or by its officers from the institution to the close of the final process"). As "strangers" to the state court litigation, Petitioners are all the more empowered to obtain injunctive relief.

B. An Injunction Is Authorized to Protect or Effectuate Prospective and Prior Judgments of the District Court

Respondents confusedly argue that (1) there has been no decision by the federal courts to protect or effectuate; and (2) relief from error is available through the state appellate court system. (Res.Br. at 4.) As to the first point, the federal district court will ultimately issue a declaratory judgment in this case. Thus, there is a *prospective* federal judgment which the district court is empowered to enforce. To deny the potential for injunctive relief at this juncture is premature. As to the second point, ERISA does not empower Petitioners to obtain relief through the state court system; Petitioners *must* apply to the *federal* courts for declaratory judgment and injunctive relief to enforce the terms of the Plans and ERISA. ERISA section 502(a)(3) and (e)(1).

Respondents also argue, misleadingly, that Petitioners seek the "same injunction" that the district court denied to the state court defendants in *Colt Industries, Inc. v. Nobers*, No. 85-563 (W.D. Pa. Aug. 12, 1985), *aff'd without opinion*, 787 F.2d 581 (3d Cir. 1986). (Res.Br. at 4.) There, Colt and Crucible attempted to enjoin *Nobers II* to "protect or effectuate" the *prior* federal court judgment in *Nobers I*. (*See* Petition for Certiorari, at 4-5.) Although the district court erroneously denied injunctive relief to Colt and Crucible (*only* as to relitigation of *Nobers I*) Petitioners are not bound by that decision because they were *not* parties or privies to that lawsuit. *See Montana v. United States*, 440 U.S. 147, 153-55 (1979). The panel below erred on this point. (*See* App. at 21a.)

C. An Injunction Is Expressly Authorized in Aid of Exclusive Federal Jurisdiction under ERISA

ERISA's plain language and its legislative history (*see* Petition for Certiorari, at 8-11) are fully adequate to support injunctive relief in aid of exclusive federal jurisdiction under the first Anti-Injunction Act exception. *Mitchum v. Foster*, 407 U.S. 225, 237 (1972) (none of the statutes previously found to "expressly authorize" injunctive relief have an explicit reference to the Anti-Injunction Act). This point alone, which Respondents are unable to refute (*see* Res.Br. at 5), is sufficient reason both to grant *certiorari* and to make injunctive relief available. Therefore, this Court should grant *certiorari* to clarify that injunctive relief is "expressly authorized" within the meaning of the Anti-Injunction Act, to protect the exclusive jurisdiction of the federal courts under ERISA.

D. Petitioners Brought this Lawsuit for Declaratory Judgment and Injunctive Relief at an Appropriate Time and Have Shown Adequate Grounds for Relief

Respondents assert that this action is "plainly anticipatory," but in virtually the same breath they question, "[w]here have Petitioners been since 1984?" (*Id.*) Thus, Respondents have not sorted out whether they believe Petitioners commenced this lawsuit for declaratory judgment and injunctive relief too soon or too late. Petitioners brought suit at the time they deemed appropriate and practicable based on their observations and judgments regarding the course of litigation, and taking into consideration the cost of litigation versus the need to have their obligations clarified.

Respondents accuse Petitioners of somehow acting in the interest of Colt and Crucible. (Res.Br. at 5.) Their arguments here, too, are empty. Petitioners are presently operating under the premise that Respondents' rights and status entitle them to participate in, and to receive benefits under the terms of, the Salaried Plans. This is the best assessment of Petitioner fiduciaries, based on the information available to them. If Respondents do have the rights they allege in *Nobers II*, then those rights evidently arise from facts and information presently unavailable to Petitioners.

Petitioner fiduciaries have waited at length for Respondents to assert administrative claims, and to set forth the basis for their claims, so that Petitioners may evaluate whether Respondents are entitled to benefits under the terms of the Collective Bargaining Unit Plans, rather than the Salaried Plans. This is not an optional choice that can be rejected. It is the procedure mandated by the Plans and by ERISA. *See* ERISA section 503; *Bruch*, 489 U.S. 101.

There is no requirement that Petitioners show "irreparable harm" as Respondents suggest. (Res.Br. at 5.) Under traditional trust law as well as ERISA, fiduciaries may seek guidance and equitable relief to determine their obligations and duties. "A trustee who is in doubt as to the interpretation of the instrument can protect himself by obtaining instructions from the court". *Bruch*, 489 U.S. at 112 (citation omitted).

E. This Case Implicates All Three Anti-Injunction Act Exceptions

Respondents err in asserting that the Anti-Injunction Act presents an "absolute bar against federal injunctions." (Res.Br. at 5.) The Anti-Injunction Act contains three explicit statutory exceptions. *See generally Mitchum*, 407 U.S. at 236. Because this case implicates all three exceptions to the Anti-Injunction Act, and implicates the "protect and effectuate" exception as to both prior and prospective federal judgments, this case is an eminently suitable vehicle for this Court to consider whether injunctive relief is available to enforce ERISA's exclusive federal court jurisdiction.

F. Conclusion

Petitioners have presented sound and convincing reasons why this case is appropriate for *certiorari*, which Respondents have failed to refute. For all the reasons set forth in this Reply, and in the Petition for Certiorari, this Court should grant *certiorari*.

Respectfully submitted,

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